



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2004-3448

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200340.

The City of Austin (the "city") received three requests for the internal affairs investigation of Officer Scott Glasgow in relation to the shooting death of a suspect. You inform us that some of the requested information has been released to the requestors but claim that other requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by another statute. You claim that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8, governs some of the submitted documents. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and

¹Although you have marked some information as being excepted from disclosure under sections 552.107 and 552.122, you did not timely raise section 552.122 and have failed to explain how either section applies to the information you have marked. Therefore, we find that you have waived these exceptions. *See* Gov't Code §§ 552.301, .302.

Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office recently addressed the interplay of the Privacy Rule and the Public Information Act (the “Act”), chapter 552 of the Government Code. *See* Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held that disclosures under the Act come within section 164.512(a) of title 45 of the Code of Federal Regulations. Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. Open Records Decision No. 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may withhold requested protected health information from the public only if an exception in subchapter C of the Act applies.

Section 552.101 also encompasses information made confidential by state statutes. Some of the submitted documents constitute medical records, access to which is governed by the Medical Practice Act (the “MPA”), Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001. Based on this

definition, a deceased individual cannot be a "patient" under section 159.001 of the MPA. Thus, section 159.002 protects only the medical records of people who were alive at the time the records were created. Medical records may be released only on the signed consent of certain individuals. Occ. Code §§ 159.005(a)(5). That consent must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).

In this instance, the information at issue contains records regarding "patients" as well as deceased individuals. We have reviewed these documents and marked those that constitute medical records, which may only be released in accordance with the MPA. *See* Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). The city must withhold the medical records that we have marked unless the city receives valid consent under the MPA for their release. The records created after an individual's death do not constitute "record[s] of the identity, diagnosis, evaluation, or treatment of a patient by a physician" and are therefore not subject to the MPA and may not be withheld on that basis.

Some of the remaining submitted documents pertain to emergency medical service ("EMS"). Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091. Subsection 773.091(g) provides, however, that this confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g).

We have marked documents that constitute EMS records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. We note that none of the exceptions to confidentiality listed in section 773.092 appears to apply in this instance, nor have you informed us that the person who received this treatment consented to release of these records. *See* Health & Safety Code § 773.093 (listing elements of consent for release

of EMS records). Thus, we find that most of the information in the documents we have marked is made confidential by section 773.091 and must be withheld under section 552.101.

However, as noted above, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving emergency medical services is not confidential under section 773.091 and may not be withheld on that basis.

You also contend that some of the submitted information is made confidential by section 143.089(g) of the Local Government Code, which is also encompassed by section 552.101. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g).

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).² *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate, and the submitted documents reflect, that the submitted information pertains to allegations of misconduct that resulted in discipline under chapter 143 as well as an

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055.

allegation that did not result in such discipline. *See* Local Gov't Code §§ 143.051-.055. We agree that the information that pertains to the allegation that did not result in discipline is confidential under section 143.089(g) and must be withheld under section 552.101. However, the general background information and miscellaneous video tapes that you seek to withhold are part of the investigation that resulted in discipline. Therefore, this information is not protected by section 143.089(g) and may not be withheld on that basis. We have indicated the information that the city must withhold under section 552.101 in conjunction with section 143.089(g).

The submitted information also includes law enforcement records concerning juveniles. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996 are governed by former section 51.14(d) of the Family Code, which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Some of the submitted records portray as suspects individuals who were within the definition of a "child" at the time of the offenses. *See* Fam. Code § 51.02 (defining "child" for purposes of title 3 of Family Code as individual who is ten years of age or older and under 17 years of age). We have marked information that constitutes law enforcement records concerning juvenile conduct that occurred on or after September 1, 1997 as well as prior to January 1, 1996. This information must be withheld pursuant to section 552.101 as information made confidential by law.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI "means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions" but does not include "driving record information maintained by [the Department of Public Safety ("DPS")] under Subchapter C, Chapter 521, Transportation Code." Gov't Code § 411.082(2).

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. Gov't Code §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also* Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to

CHRI obtained from other criminal justice agencies). Therefore, you must withhold any CHRI that you have in your possession that falls within the ambit of these state and federal regulations.

You also assert that some of the submitted information, including the video tape depicting the scene of the shooting and the autopsy reports and photographs, is protected by common law privacy, which is also encompassed by section 552.101.³ The right of privacy lapses at death; thus information may not be withheld on the basis of the privacy interests of a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). However, the United States Supreme Court recently recognized that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004).

In order for information to be protected under common law privacy, it must both (1) contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person *and* (2) not be of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

We have reviewed the submitted records and marked the information that must be withheld under section 552.101 on the basis of common law privacy. As for the images and other

³We note that autopsy photographs are generally confidential under section 11 of article 49.25 of the Code of Criminal Procedure. However, in this instance the city informs us that "[s]ection 11(2) is applicable to the autopsy photographs responsive to the instant request." Section 11(2) provides that an autopsy photograph "is subject to disclosure: . . . (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement."

records pertaining to the deceased, while we agree that they arguably contain highly intimate facts, the publication of which would be highly objectionable to a reasonable person, this information pertains to the shooting death of an individual by a police officer. Such information is of immense legitimate public interest. Therefore, we find that the photographs, autopsy reports, and video tape may not be withheld pursuant to section 552.101 in conjunction with common law privacy.

You also contend that some of the submitted information may be withheld under section 552.108. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why this exception applies. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (construing statutory predecessor). We note, however, that section 552.108 is generally inapplicable to a police department’s internal administrative investigations that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

In this instance, you have marked a portion of the submitted information, which you indicate pertains to an ongoing criminal investigation by the Travis County Sheriff’s Office (the “sheriff”). We have received correspondence from the sheriff informing us that the case remains pending and objecting to release of this information. Based on the sheriff’s representations and our review of the information at issue, we conclude that the sheriff has demonstrated that section 552.108(a)(1) applies to records of this criminal investigation. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident).

However, we note that one of the documents you seek to withhold pursuant to section 552.108(a)(1) relates to a police department internal administrative investigation. As you have failed to explain how this document relates to the pending criminal investigation, this document may not be withheld pursuant to section 552.108(a)(1). *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). We have marked the records that the city may withhold under section 552.108(a)(1).

Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution.” Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has determined that the statutory predecessor to section 552.108(b) excepts from disclosure “the cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2 (1988). In that decision, we noted that the purpose of the cellular telephones is to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* at 2.

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

Having considered your representations and assertions, we agree that the department may withhold police officers’ cellular telephone and pager numbers and the video tape entitled “High Risk Car Stops” pursuant to section 552.108(b)(1) of the Government Code. However, we find that you have failed to explain how the remaining information at issue differs from procedures and techniques that are commonly known and have failed to meet your burden of explaining how and why release of this information would interfere with law enforcement and crime prevention. *See* ORD 562 at 10. Therefore, none of the remaining information may be withheld pursuant to section 552.108(b)(1).

You also raise section 552.117 of the Government Code regarding the submitted information. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request

that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.⁴ We note, however, that the protections of section 552.117 apply only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117).

Pursuant to section 552.117(a)(2), the city must withhold the listed information for anyone who is a licensed peace officer employed by the city. Pursuant to section 552.117(a)(1), the city must also withhold personal information that pertains to a current or former employee who made a timely election to keep such information confidential. We note, however, that some of the information you seek to withhold pursuant to this exception pertains to an individual who is employed by the county rather than the city. Because the city does not hold this information as the employer of this individual, the city may not withhold any information pertaining to this individual under section 552.117.

Social security numbers that are not excepted from disclosure under section 552.117 may be confidential under federal law and thus excepted from disclosure under section 552.101. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the remaining social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that such information is not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy, the social security number of a deceased individual may not be withheld on the basis of the federal law. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981).

⁴The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

You also raise section 552.119 of the Government Code as a possible exception to disclosure. This section provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. You informs us that "some of the officers [whose photographs are at issue] have in the past, and are expected in the future, to work in plain clothes or an undercover capacity." You assert that "[r]elease of the officers' photographs would endanger their lives or physical safety by revealing their identities to persons who would be the subject of undercover or plain clothes investigations." For example, you inform us that "one of the officers depicted is currently assigned to a unit that often operates in an undercover capacity purchasing narcotics."

Having considered your representations and arguments, we find that you have established that release of the photographs of officers who have worked in an undercover capacity or are reasonably expected to work in such a capacity in the future would jeopardize those officers' safety. Therefore, the likenesses of these individuals must be redacted from the submitted photographs and video tapes in accordance with section 552.119. However, we find that you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the photographs and video tapes depicting officers who do not work undercover would endanger the life or physical safety of those officers. Therefore photographs and video tapes depicting officers who do not work undercover may not be withheld under section 552.119 of the Government Code.

You also note that the submitted records include motor vehicle record information. Section 552.130 of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an

agency of this state; [or] a motor vehicle title or registration issued by an agency of this state.” We note, however, that section 552.130 is designed to protect individuals’ privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Accordingly, motor vehicle record information, including photographs, that pertains to persons who are living and vehicles in which living individuals have an interest must be withheld under section 552.130. Information from motor vehicle records that were issued to persons who are now deceased may not be withheld under section 552.130.

Finally, we note that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the marked medical records may only be released in accordance with the MPA. With the exception of information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving emergency medical services, the marked EMS records are confidential under section 773.091 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. We have indicated the information that the city must withhold under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. In addition, we have marked law enforcement records that are made confidential under section 51.14 or section 58.007 of the Family Code and must be withheld under section 552.101. Under section 552.101, the city must withhold CHRI obtained pursuant to the state and federal regulations. We have marked information that is protected by common law privacy and therefore must be withheld under section 552.101. Pursuant to section 552.108, the city may withhold the marked information that pertains to a pending criminal investigation. Police officers’ cellular telephone and pager numbers and the video tape entitled “High Risk Car Stops” may be withheld under section 552.108(b)(1). Pursuant to section 552.117(a)(2), the city must withhold the current and former home addresses and telephone numbers, social security numbers, and family member information of licensed peace officers employed by the city. Pursuant to section 552.117(a)(1), the city must withhold the same information for individuals who were not licensed peace officers at the time this request was received but are current or former employees or officials who elected, prior to the receipt of this request, to keep such information confidential. Social security numbers that pertain to living individuals and that are not excepted from disclosure under section 552.117 may be confidential under federal

law. Under section 552.119, the city must redact the likenesses of police officers who work undercover. Texas-issued motor vehicle record information pertaining to living individuals or automobiles in which living individuals have an interest must be withheld under section 552.130. The city must release the remaining submitted information in accordance with applicable copyright laws.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

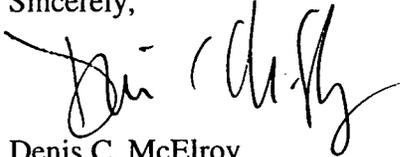
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 200340

Enc. Submitted documents

c: Mr. Tony Plohetski
Austin American Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)

Mr. Jordan Smith
Austin Chronicle
4000 N. IH-35
Austin, Texas 78751
(w/o enclosures)

Mr. Kevin McPherson
FOX 7 NEWS
119 East 10th Street
Austin, Texas 78701
(w/o enclosures)